

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION

UNITED STATES OF AMERICA

v.

BENJAMIN ERNEST JOHNSON

DOCKET NO. 1:16CR6

FACTUAL BASIS

NOW COMES the United States of America, by and through Jill Westmoreland Rose, United States Attorney for the Western District of North Carolina, and hereby files this Factual Basis in support of the plea agreement filed simultaneously in this matter.

This Factual Basis does not attempt to set forth all of the facts known to the United States at this time. This Factual Basis is not a statement of the defendant, and, at this time, the defendant may not have provided information to the United States about the offenses to which the defendant is pleading guilty, or the defendant's relevant conduct, if any.

By their signatures below, the parties expressly agree that there is a factual basis for the guilty plea(s) that the defendant will tender pursuant to the plea agreement. The parties also agree that this Factual Basis may, but need not, be used by the United States Probation Office and the Court in determining the applicable advisory guideline range under the *United States Sentencing Guidelines* or the appropriate sentence under 18 U.S.C. § 3553(a). The defendant agrees not to object to any fact set forth below being used by the Court or the United States Probation Office to determine the applicable advisory guideline range or the appropriate sentence under 18 U.S.C. § 3553(a) unless the defendant's right to object to such particular fact is explicitly reserved below. The parties' agreement does not preclude either party from hereafter presenting the Court with additional facts which do not contradict facts to which the parties have agreed not to object and which are relevant to the Court's guideline computations, to 18 U.S.C. § 3553 factors, or to the Court's overall sentencing decision.

1. In February of 2014, BENJAMIN ERNEST JOHNSON was a United States Navy Chief Petty Officer (pay grade E-7) on active duty stationed in Asheville, North Carolina. JOHNSON's duties were to conduct recruiting of high school age students in Western North Carolina including at North Buncombe High School in Buncombe County.
2. Sometime during the fall of 2013, in the course of his official duties, JOHNSON met child victim one (hereinafter "CV1"), a female fifteen year old student at North Buncombe High School enrolled in the school's Naval Junior Reserve Officer Training Corps (NJROTC).
3. JOHNSON began to communicate with CV1 via instant messaging applications on his phone known as Snapchat and Kik Messenger which operate through the Internet. By February of 2014, these communications became sexual in nature.

4. On February 26, 2014, at 7:50 PM, JOHNSON sent an image to CV1 of his nude penis from his Samsung Galaxy SIII cellular phone via Kik Messenger. JOHNSON communicated to CV via Kik that it was now "her turn" and that he would like her to take a picture of herself "playing with herself" or "touching herself." At 7:52 PM, CV1 then used her Huawei HTC cellular phone to send a lewd and lascivious photograph of her nude pubic area showing two fingers inserted into her vagina. CV1 sent this photo to JOHNSON via Kik Messenger. CV1 had created this photo on a prior occasion but she sent it to JOHNSON because it fit the request he made to her. JOHNSON also requested photos of CV's "boobs" so at 7:53 PM, she sent him a nude topless picture (depicting only above her waist) she had also taken on a prior occasion that fit his request. At 7:54 PM, CV1 sent a photograph she had taken on a prior occasion depicting her from above the waist wearing only a bra. At 7:56 PM, JOHNSON sent a photo to her of his erect penis.
5. JOHNSON took an additional photo of his erect penis which he sent via Kik to CV1 on February 27, 2014 at 5:19 PM. JOHNSON encouraged CV1 to take additional sexually explicit photos of herself to send to him, including a request to send him a "wet" photo of her vagina. As a result of JOHNSON's requests, CV1 took a lewd and lascivious photo of her vagina on February 27, 2014 at 5:32 PM. CV1 sent this photo to JOHNSON via Kik Messenger and he received it via Kik at 5:34 PM that day.
6. JOHNSON sent another photo of his erect penis to CV1 on February 28, 2014 at 8:03 AM.
7. JOHNSON also solicited sexually explicit photos from another child victim (hereinafter CV2) that he met in 2011 when she was a high school freshman. JOHNSON maintained a relationship with her until March of 2014.<sup>1</sup>
8. In an interview with FBI Special Agent Andy Romagnuolo conducted on March 16, 2016, CV2 stated the following:
  - a. She was a NJROTC student at North Buncombe High School her freshman year. After her freshman year, she transferred to Madison County High School and became an Army JROTC student there. CV2's initial contacts with JOHNSON were "all about the Navy."
  - b. CV2 became Facebook friends with JOHNSON once she got to Madison County high school and they eventually began to chat on the instant messaging application Snapchat. JOHNSON began to compliment and flatter CV2 via Snapchat. CV2 considered their communications to be the beginning of a relationship and she "thought it would become something."

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<sup>1</sup> Defendant reserves the right to object to all facts relating to CV2.



- c. Eventually, JOHNSON requested that CV2 send him sexually explicit photos via Snapchat. JOHNSON would send CV2 photos of his penis captioned with a message that said "I'm lying in my bed thinking of you." JOHNSON told CV2 to "send me some sexy pics." CV2 said that JOHNSON eventually sent four or five more pictures of his penis to her.
  - d. CV2 said that at JOHNSON's request, she sent him two or three photographs of her vagina. CV2 said that she never had any physical contact with JOHNSON, but they were planning to do so. JOHNSON was planning to take CV2 to a military testing location where she would take a military entrance exam. CV2 believes that they would have used this opportunity for JOHNSON to be alone with her.
  - e. All of these events occurred before March of 2014. CV2 turned eighteen years of age later in 2014.
9. Tony Johnson is a detective with the Asheville Police Department and a task force officer with the FBI. He is also a computer forensic analyst. In March and April of 2016, Detective Johnson examined JOHNSON, CV1, and CV2's cell phones pursuant to a new search warrant utilizing the latest in cell phone extraction and analysis software. Detective Johnson discovered the following:
- a. JOHNSON's phone contained:
    - i. Four child pornography images of CV1. Two of these images were the same ones recovered from Kik.
    - ii. Two child pornography images of CV2.
    - iii. Numerous obscene images of JOHNSON's exposed penis.
    - iv. A chat between JOHNSON and CV1 in which they discuss kissing each other.
    - v. A chat between JOHNSON and CV2 in which they discussed JOHNSON picking CV2 up from school under the pretense of a Navy interview for the actual purpose of being alone together.
    - vi. CV1 and CV2's usernames were listed as contacts on the Kik Messenger application which was installed.

- b. CV1's phone contained the same child pornography images of her that were recovered from Kik and JOHNSON's phone. It also contained two photos of JOHNSON. In one image JOHNSON is holding his exposed penis. This image was the same image as was recovered from JOHNSON's phone and which was transmitted to CV1 through Kik messenger. JOHNSON's Kik username was listed as a contact on CV1's Kik messenger application.
- c. CV2's phone contained two non-explicit images of JOHNSON. Evidence of contact and chatting between CV2 and JOHNSON via Facebook, Skype and Google Hangout was found.

10. The Internet is a facility of interstate commerce. The cellular telephones were manufactured outside of North Carolina. CV1 was fifteen years old and CV2 was under eighteen years of age during all the events described in the factual basis.

JILL WESTMORELAND ROSE  
UNITED STATES ATTORNEY

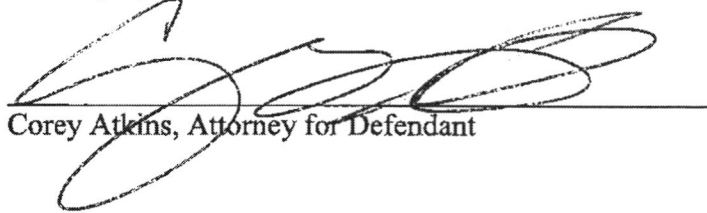


DAVID A. THORNELOE

ASSISTANT UNITED STATES ATTORNEY

Defendant's Counsel's Signature and Acknowledgment

I have read this Factual Basis, the Bill of Indictment, and the plea agreement in this case, and have discussed them with the defendant. Based on those discussions, I am satisfied that the defendant understands the Factual Basis, the Bill of Indictment, and the plea agreement. I hereby certify that the defendant does not dispute this Factual Basis with the exception of those facts to which I have specifically reserved the right to object, and understands that it may be used for the purposes stated above.



Corey Atkins, Attorney for Defendant

DATED: 5-3-16